

Before the
Federal Communications Commission
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Ocean County, New Jersey |) | |
| |) | |
| For Waiver of Rule Section 90.209(b) to |) | |
| Permit Wideband Operations on Trunked |) | |
| Public Safety Pool Service Stations WIL552 |) | |
| And WPXC650 |) | |
| |) | |
| Implementation of Sections 309(j) and 337 of |) | WT Docket No. 99-87 |
| the Communications Act of 1934, as Amended |) | |
| |) | |
| Promotion of Spectrum Efficient Technologies |) | RM9332 |
| on Certain Part 90 Frequencies |) | |

To: Chief, Public Safety and Homeland Security Bureau

**REPLY TO COMMENTS OF THE AMERICAN ASSOCIATION OF STATE
HIGHWAY AND TRANSPORTATION OFFICIALS SPECIAL COMMITTEE
ON WIRELESS COMMUNICATIONS TECHNOLOGY ON REQUESTS FOR
WAIVER OF THE JANUARY 1, 2013 VHF-UHF NARROWBANDING
DEADLINE**

Ocean County, New Jersey (“Ocean County” or the “County”), by its attorneys,
hereby submits its Reply to the Comments of the American Association of State Highway
and Transportation Officials Special Committee on Wireless Communications
Technology (the “Committee”) in connection with the various requests for waiver of the
January 1, 2013 VHF-UHF narrowbanding deadline.

I. The Committee's Claims that the FCC Rejected Governmental Budgetary Constraints and Transitions to Alternative Spectrum Bands as a Valid Justification for Rule Waiver is False.

The Committee asserts, without citation in support, that the Commission has rejected a licensee's budgetary constraints and/or its proposed transition from the VHF/UHF band to alternative frequency bands (e.g., 700 MHz or 800 MHz) as valid justifications for obtaining a waiver of the narrowbanding requirement. This unsupported assertion is contrary to the waiver criteria set forth in the Commission's Public Notice released July 13, 2011 entitled "Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau and Office of Engineering and Technology Provide Reminder of January 1, 2013 Deadline for Transition to Narrowband Operations in the 150 – 174 MHz and 421 – 512 MHz Bands and Guidance for Submission of Requests for Waiver and Other Matters" (DA 11-1189) (*Narrowband Public Notice*). In the *Narrowband Public Notice*, the Commission clearly stated that licensees' waiver requests could be based, in part, on (a) the availability of "[f]unding sources, including whether the licensee's budget requires government approval or a multi-year budget process" and (b) whether "... the licensee plans to migrate to a non-VHF/UHF band (e.g., 700 MHz or 800 MHz), whether it will relinquish VHF/UHF spectrum once it has migrated and the amount of spectrum to be relinquished."¹

¹ See *Narrowband Public Notice* at 3.

In its waiver request, Ocean County clearly demonstrated that it meets these criteria and that its need for a waiver is due to reasons beyond its control and not poor planning on its part. In fact, as a practical matter, the County has no choice but to transition its public safety communications system from the Channel 20 UHF T-Band allocation to the 700 MHz band due to significant issues with tropospheric ducting interference. As a result, the County is diligently taking the necessary steps to make this transition as quickly as feasibly possible, given its budgetary constraints and the procurement practices imposed by the State of New Jersey.² Because sufficient public safety frequency allocations previously have not been available to the County in the VHF, UHF, 800 MHz and NPSPAC public safety bands, the County was not in a position to begin this process until June, 2010, when it promptly submitted its 700 MHz applications to Region 28 for coordination in the first available filing window. This is because the 700 MHz spectrum did not become available until well after the conclusion of the DTV transition, which occurred on June 12, 2009. The Commission finally granted the County's 700 MHz applications on January 11, 2012, and Ocean County is moving forward diligently to implement this \$21 million project over the next five years in accordance with its proposed extended implementation plan.³

² As a local governmental entity, Ocean County is subject to budgeting and procurement requirements imposed by the State of New Jersey on all state and local governmental entities. As a result, Ocean County must comply with all state statutes and regulations as well as its own procurement regulations. Additionally, as a political subdivision of the State of New Jersey, the County is subject to budgetary constraints based upon revenues and fees derived from tax revenues and fees and budgetary appropriations from the Board of Freeholders, its governing body. As a result, the County must follow a multi-year cycle for the planning, approval, funding and purchase of its proposed 700 MHz public safety communications system since it cannot obligate funds in a fiscal year before they are available for obligation.

³ See ULS File Nos. 0005076314 and 0005076205. In its Waiver Request, Ocean County made it clear that upon completion of its transition to the 700 MHz band, it will retain a single frequency pair in the UHF T-Band Channel

As demonstrated in the above-captioned waiver request, the cost to narrowband the Channel 20 UHF T-Band system is over \$600,000. The Channel 20 UHF T-Band system is a large, complex system comprising 11 trunked channel pairs and five conventional channels at eight discrete fixed locations throughout Ocean County. Additionally, the County has 4,000 mobile units comprised of vehicle mounted units and hand held portables. Because of the complexity of the system, narrowband will be extremely time consuming and expensive in that the radio technicians must physically modify each and every radio in order to accomplish the narrowbanding. This has caused the County to make a serious evaluation of this system and the alternatives available to meet its public safety communications needs. As a result of this evaluation – and the results of serious lobbying by the County of the Commission’s staff regarding the tropospheric ducting interference issue, Ocean County has determined that it would be best served by the ultimate abandonment of the Channel 20 UHF T-Band in favor of the 700 MHz band. As a result, the County cannot justify the \$600,000 cost to taxpayers for the narrowbanding of a system that will ultimately be scrapped due to existing issues with tropospheric ducting interference. Accordingly, the public interest would be best served by allowing the County to make the most valuable use of its scarce and limited financial resources to procure and install its proposed 700 MHz public safety communications system. It would make no sense in the present economy to make a public safety entity

20 Allotment (508.1875/511.1875 MHz) while returning the rest of its allocation of Channel 20 UHF T-Band allotment frequencies authorized under the licenses for Stations WIL552 and WPXC650 to the Commission for relicensing. The County will narrowband the frequency pair 508.1875/511.1875 MHz during the third quarter of calendar year 2012 and has already narrowbanded its UHF Channel 15 allotment, which will be retained in order to ensure interoperability with neighboring jurisdictions. *See* Waiver Request at p. 10, n. 9.

spend a significant amount of resources modifying an outdated radio system that is going to be dismantled in the near future.

II. The Committee's General Concerns do not Apply to the County's Waiver Request.

At the outset, it is apparent that the Committee does not understand the unique interference issues that have plagued Ocean County's existing Channel 20 UHF T-Band system. As demonstrated in its above-captioned waiver request, Ocean County meets the requirements of Section 1.925 of the Commission's Rules due to the unique circumstances caused by tropospheric ducting, which renders the County's existing UHF T-Band public safety communications system (and the Channel 20 frequency allotment in particular) adversely affected for hours at a time.⁴

Ocean County does not dispute the Committee's contention that frequency band changes for the sake of frequency band changes are not required to comply with the narrowbanding requirement. However, in this case, the County has a critical need for making the change – namely to eliminate the adverse impact of harmful interference on its public safety communications system. Had the County not had this interference issue, it would not be undertaking the very expensive process of migrating its public communications system from the affected channels to the 700 MHz band and would have completed the narrowbanding of those channels in 2009 when it narrowbanded the Channel 15 UHF T-Band frequencies. Accordingly, even though the 700 MHz project

⁴ See Waiver Request at p. 2.

will take several years to complete, it is a critical project that must be completed and is currently progressing in accordance with the schedule proposed in the County's above-mentioned extended implementation request. Stated differently, because of the issues with tropospheric ducting interference, the County has every incentive to complete the transition from the Channel 20 UHF T-Band channels to the 700 MHz public safety frequencies. As a result, absent a catastrophic change in the economy, the County has no reason to anticipate that this project will not be fully funded by the Board of Freeholders.

Conclusion

For the foregoing reasons, it is respectfully submitted that Ocean County has met its burden to justify a grant of the above-captioned waiver request and that the public interest would be served by permitting the County to devote its scarce personnel and financial resources to the replacement of the Channel 20 UHF T-Band system rather than expending significant time and financial resources to narrowband a system that will be

replaced in the next few years due to its unsuitability as a public safety communications system.

Respectfully submitted,

OCEAN COUNTY, NEW JERSEY

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